IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

MFA.No. 657 of 2001(B)

O.P(MV).NO.365/1999 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, THRISSUR.
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APPELLANTS/PETITIONERS:
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1. **PUSHPAVALLI, W/O. DECEASED BALAKRISHNAN, CHITTANGARA HOUSE, ALAGAPPA NAGAR.P.O., AMBALLOOR, THRISSUR.**

2. **MINOR SIMI, AGED 16 YEARS, D/O. DECEASED BALAKRISHNAN, REP. BY GUARDIAN MOTHER OF THE 1ST PETITIONER PUSHPAVALLI.**

BY ADV. SRI.P.V.CHANDRA MOHAN,
SRI.T.VENUGOPALAN.

RESPONDENTS/RESPONDENTS:
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1. **M.K. MOHANAN, S/O. KUMARAN, MANCHERY HOUSE, KAIPARAMBU.P.O.**

2. **MOHANAN, S/O. KUTTAN VETTATH HOUSE, PAZHUNNANNA.P.O., CHEMMENTHITTA.**

3. **NEW INDIA INSURANCE CO. LTD., BR. KUNNAMKULAM.**

4. **JOY.K.T., S/O. THOMAS, KUNNAN HOUSE, KALLOOR.P.O.**

M.F.A. NO. 657/2001:

5. UNITED INDIA INSURANCE CO. LTD.,
BR. CHALAKUDY.

BY ADV. SRI.P.JAYASANKAR,
SRI.BABU CHERUKARA,
SRI.BABY P. ANTONY,
SRI.P.G.GANAPPAN.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.657 OF 2001

Dated 1st June, 2007

JUDGMENT

Koshy,J.

Appellants are the widow and minor child who claimed compensation for the death of one Balakrishnan who died in a motor accident. They claimed a compensation of Rs.5,86,000/=. The Tribunal found that the accident occurred due to the negligence of the driver of the lorry insured by the third respondent insurance company. However, only a total compensation of Rs.2,38,000/= was awarded. Only quantum of compensation is disputed in this appeal. Therefore, we are only dealing with that aspect. The deceased was aged 45 years at the time of his death. According to the claimants, post mortem certificate shows that he was aged 48. Electoral card shows that he was aged 45. In any event, as per the second schedule, the apt multiplier for a person aged between 45 and 50 is 15 and Tribunal has taken 13 as the multiplier taking guidelines from the second schedule and we are of the opinion that no enhancement is required in the multiplier. It is contended that the income taken is very low. According to the claimants, the deceased was a copra merchant earning an income of Rs.6,000/= per month. The Tribunal did not accept the same as business accounts were not produced. However, Ext.A7 LIC

receipts were produced to show that he was regularly paying a quarterly premium of Rs.1,560/= for insurance and Ext.A8 shows that he was regularly paying some amount for kuri. He also produced Ext.A9 Kisan Vikas Pathra for Rs.50,000/= to show that after maintaining the family he was earning such amount. Ext.A10 shows that he has constructed a new building and building tax was demanded. There is no clear data to prove the income. Considering his earnings, his savings apart from maintaining family etc., we are of the opinion that at least Rs.3,000/= can be taken as the monthly income. If that be so, after deducting one third for personal expenses, Rs.2,000/= can be taken as the loss of monthly dependency. Hence, the total compensation payable will be Rs.2,000 x 12 x 13 = Rs.3,12,000/=. The Tribunal has awarded only Rs.2,08,000/= for loss of dependency. Therefore, balance payable will be Rs.1,04,000/=. It was argued that compensation granted in all other heads are inadequate and no amount was awarded for loss of estate. Considering the total compensation awarded by the Tribunal, we are of the opinion that no enhancement is necessary in the compensation awarded under other heads. The additional compensation of Rs.1,04,000/= now awarded by us, over and above the decreed amount by the Tribunal, should be deposited by the third respondent

insurance company within three months from the date of receipt of a copy of this judgment with 7% interest from the date of application till its deposit.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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